

United States Department of State



Washington, D.C. 20520

February 12, 1988

MEMORANDUM

TO: Commerce - Mr. Vincent DeCaine
 - Mr. Archie Andrews
 Justice - Mr. Steve Weglian
 - Mr. Wolodymyr Sulzynsky
 Treasury - Ms. Marilyn Muench
 NSC - Col. Richard Porter
 DOD - Mr. Peter Probst
 CIA -
 PM - Mr. Bob Mantel
 EB - Mr. Paul Wisgerhoff
 L/LEI - Mr. Tony Perez
 L/EBC - Mr. Mark Kenchilian
 L/PM - Mr. Ron Klienman
 NEA/ECON - Ms. Mary Porto
 H - Mr. Robert Downey

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 HFAC

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FROM: S/CT- Clayton E. McManaway, Acting *CM*

SUBJECT: IG/T Legislative Subcommittee Meeting, 3:00 P.M.
 Thursday, February 18, Room 2236 State Department

The House Foreign Affairs Committee has tentatively scheduled a hearing for March 15 on H.R. 3651 by Rep. Howard Berman (D-Calif.) to consolidate and change existing legislation controlling the sale of dual-use equipment and munitions control list items to countries on the terrorism list. Administration officials will be invited to testify.

It is necessary to develop an Administration position for drafting testimony on this rather complex bill and for that purpose, you are invited to attend a meeting of the Legislative Subcommittee of the Inter-agency Subcommittee on Terrorism (IG/T). The meeting will be chaired as usual by Ambassador Al Adams who will be back from an overseas trip.

The Berman bill is co-sponsored by HFAC chairman Dante Fascell and other key senior members. They are hoping to mark it up for Committee approval not long after the hearing. For those who have not previously received it, enclosed is a copy of the bill and the analysis prepared by the Berman and HFAC staffs.

If you have any further questions or cannot attend the meeting, please contact Michael Kraft, our legislative coordinator, at 647-7633.

Agenda

1. Berman Bill. Presentation by S/CT and L/LEI.
2. Status of other pending anti-terrorism legislation:
 S/CT and DOJ.

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Congress of the United States
House of Representatives
Washington, DC 20515
HOWARD L. BERMAN
26TH DISTRICT, CALIFORNIA

Antiterrorism and Arms Export Amendments Act of 1987

H.R. []

in the House of Representatives

(Author: Howard Berman. Co-sponsors: Dante Fascell, Lee Hamilton,
Henry Hyde)

Section-by-Section Analysis

SECTION 1. SHORT TITLE

The title of H.R. [], namely the Antiterrorism and Arms Export Amendments Act of 1987, reflects the fact that the legislation amends certain provisions of law dealing with antiterrorism policies and with the regulation of arms exports.

**SECTION 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUNTRIES
SUPPORTING TERRORISM.**

Existing Prohibitions

Since 1977, the Arms Export Control Act (AECA) has

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prohibited all sales under AECA "to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism." (Section 3(f) of AECA) If the President "finds that national security justifies a continuation of sales" to any such government, the sales may continue provided the President reports his finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

Heightened concern over acts of international terrorism led to passage of Section 509(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, which added Section 40 to AECA. The new Section 40 prohibits the export of any items on the United States Munitions List "to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism." The Secretary of State's determination under the Export Administration Act is an explicit designation of a country as one which has repeatedly provided support for acts of international terrorism. It serves as a useful procedure by which the U.S. Government designates a "terrorist" state, and it is referenced in Section 40 of AECA for the purpose of prohibiting arms exports to identifiable terrorist states. There are currently five states which the Secretary of States has determined have repeatedly provided support for acts of international terrorism: Iran, Syria, Libya, Cuba and the

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People's Democratic Republic of Yemen.

Therefore, Section 40 currently prohibits arms exports to those five countries.

Sections 3(f) and 40 of AECA establish potentially inconsistent standards in the law. Under Section 3(f), the identification of a "terrorist" government is not entrusted with any particular U.S. Government official. This can lead to delay and failure to invoke the Section 3(f) prohibition. Section 3(f) also addresses only one aspect of support for international terrorism--providing sanctuary for terrorists. Under Section 40, the identification of a "terrorist" state (as opposed to a "terrorist" government) is clearly established by means of the Secretary of State's determination. But Section 40 does not explicitly refer to the provision of sanctuary for terrorists. Instead, Section 40 refers to a state which has repeatedly provided support for international terrorism (a standard that arguably should include providing sanctuary for terrorists).

In addition, the Presidential waiver standards under both sections differ. Under Section 40, "a particular export" can be made to a "terrorist" state "if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver." The

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Section 3(f) waiver applies to "a continuation of all sales", rather than a particular export, and has no defined term. The prohibition under Section 3(f) extends for renewable one-year periods, whereas the prohibition under Section 40 is indefinite until the Secretary of State's determination with respect to a particular country is rescinded pursuant to Section 6(j)(2) of the Export Administration Act.

Uniform Standards

There is no reason why AECA should have two sections dealing with the same prohibition. H.R. [] consolidates Sections 3(f) and 40 into an expanded and reinforced Section 40. The amended Section 40 explains in detail the broad prohibitions which currently exist in Sections 3(f) and 40 and establishes uniformity in the legal standards prohibiting arms exports to governments supporting international terrorism.

The amended Section 40 explicitly provides that both the United State Government and United States persons are subject to the prohibitions in Section 40. "United States person" is defined broadly to include citizens and residents of the United States, domestic establishments of foreign companies, and foreign subsidiaries or affiliates of U.S. companies. Actions taken by a United States person either within or outside the United States are covered by the Section 40 prohibition.

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The amended Section 40(b) creates a uniform standard for identifying governments which support international terrorism. The amended language provides for the Secretary of State to make one of two determinations--either that the government of a country "grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism". or that it "has repeatedly provided support for acts of international terrorism." The uniform standard thus combines the sanctuary principle of Section 3(f) with the standard in Section 6(j)(1) of the Export Administration Act requiring repeated support for acts of international terrorism. This standard also appears in other amendments of H.R. [] where the Secretary of State's determination is required.

Prohibited Actions

The list of prohibited actions under amended Section 40 comprehensively covers every type of transaction provided for under AECA. The United States Government is prohibited from

--exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a "terrorist" country,

--providing credits, guarantees, or other financial assistance for the acquisition of any munitions item by such country,

--consenting to any transfer of any munitions item to such country,

--providing any license or other approval for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to such country, or

--otherwise participating directly or indirectly in, or take any action to facilitate, the acquisition of any munitions item by such country. This final prohibition covers any department, agency or other instrumentality of the U.S. Government and any officer or employee of the U.S. Government (including members of the U.S. Armed Forces), and any person acting at the request or on behalf of the U.S. Government.

Under amended Section 40, a United States person is similarly prohibited from intentionally exporting or otherwise providing directly or indirectly (by sale, lease or loan, grant, or any other means) any munitions item to a "terrorist" country. This prohibition also extends to direct or indirect participation in the acquisition of any munitions item by a "terrorist" country, or any action to facilitate such acquisition. Further, a United States person is prohibited from undertaking any such transaction with "any person or entity which that United States person has reason to believe will provide such item to any such

country".

Definition of Munitions Item

The types of munitions items covered by the amended Section 40 prohibition are those which, if they were imported into or exported from the United States, would be on the United States Munitions List. In effect, this means that every type of military weapon, wherever it is manufactured, is covered.

Rescission of Determinations

The amended Section 40(d) of AECA describes the procedures for a rescission of the Secretary of State's determination that a government supports international terrorism. These procedures are almost identical to those described in the current Section 6(j)(2) of the Export Administration Act. They are incorporated in the amended AECA, in the amendment to Section 620A of the Foreign Assistance Act and in the amended Section 6(j)(2) of the Export Administration Act.

The changes in the rescission provisions are two in number. First, the amendment changes the prior notice period to Congress from 30 days to 90 days. This will allow Congress sufficient time to consider a proposed rescission and, if desirable, pass legislation to block it. Second, there is an amendment to the criteria that must be satisfied before the

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Secretary of State can rescind a determination. Under current law, it must be shown that, among other things, the subject government does not support or provide sanctuary for any major terrorist or terrorist group "in its territory". The amendment deletes the phrase "in its territory" for two reasons. It must be shown that the subject government does not support any major terrorist or terrorist group anywhere, not just in its own territory. The obvious character of international terrorism, where a government can support acts of terrorism outside its jurisdiction, requires this clarification. Although in most cases providing sanctuary means that the sanctuary is in the subject country's territory, it is clearly possible that a government could give material support to the granting of sanctuary for terrorists in another country's territory. *CSB na*

President's Waiver Authority

The amended Section 40 of AECA spells out in considerable detail the President's authority to waive the prohibition on a specific transaction. First, the new Section 40(e) of AECA would require a determination that the transaction is "vital to the national security interests", rather than "important to the national security interests". This amendment brings Section 40 of AECA in line with the standard already applied in the waiver language of Section 614(a)(2) of the Foreign Assistance Act of 1961.

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Second, no later than 15 days prior to the proposed transaction the President is required to consult with and deliver a report to the Foreign Affairs Committee of the House and to the Foreign Relations Committee of the Senate. The report is intended to be detailed enough to enable the two committees to properly evaluate the nature and scope of the proposed transaction. Classified information can be provided in an addendum to the report.

Exemption for Covert Arms Transfers

The new amended Section 40(f) of AECA provides an exemption from the Section 40 prohibition provided the notification requirements of the new amended Section 36(e) of AECA are satisfied. Section 8 of H.R. [] will amend Section 36 of AECA to explicitly require notification to the House and Senate intelligence committees of any covert arms transfer by the United States Government. Specifically, the amendment provides that the Government may not transfer or assist in the transfer of any munitions item directly or indirectly to any foreign government, foreign group or person, or any other person outside the United States Government, unless the House and Senate intelligence committees are notified of the particular arms transfer in accordance with the notification procedures set forth in Section 501 of the National Security Act.

Under current law, there must be a Presidential finding

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under Section 662 (Hughes-Ryan) of the Foreign Assistance Act of 1961 that the intelligence operation (pursuant to which the arms are being transferred) is important to the national security of the United States. The intelligence committees of the House and the Senate must be notified of the intelligence operation pursuant to Section 501 of the National Security Act. The amendment would ensure that the intelligence committees are informed of any arms transfers which may be a part of any such intelligence operation.

Relation to Other Laws

The new amended Section 40(g) of AECA provides that the Section 40 prohibition will apply notwithstanding the general waiver provisions found in Section 614(a) of the Foreign Assistance Act of 1961 or notwithstanding any other provision of law. The intent is establish a uniform standard of prohibition subject to no potentially inconsistent waiver authority in any other statute. No other statutory provision can be invoked to permit a transaction which is prohibited by Section 40. This reaffirms Section 40 of AECA as the overriding statutory prohibition on arms exports to countries which support international terrorism.

Criminal and Civil Penalties

The new amended Sections 40(h) and 40(i) of AECA provide,

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for the first time, criminal and civil penalties for violation of the provisions of Section 40. The criminal penalty may be up to \$1,000,000, imprisonment for not more than 10 years, or both. The President may exercise the same powers concerning violations and enforcement set forth in the Export Administration Act, except that a civil penalty under Section 40 of AECA may not exceed \$500,000.

SECTION 3. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LICENSES AND IN ARMS SALES.

Section 3 of H.R. [] adds one more criterion to the Government's consideration of the issuance of export licenses for munitions items and in the Government's evaluation of arms sales. In deciding upon whether to issue an export license, the President is required to take into account the opinion of the Director of the Arms Control and Disarmament Agency (ACDA) as to whether the export of an article "will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements." The additional criterion in the new amended Section 38(a)(2) of AECA will be whether the export of an article will "support international terrorism".

Further, where arms sales are concerned, the President's

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report to Congress under Section 36(1)(D) of AECA will have to include an evaluation prepared by the Director of ACDA in consultation with the Secretary of State and the Secretary of Defense of the manner, if any, in which the proposed sale would support international terrorism.

SECTION 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.

Section 4 of H.R. [] amends in four important respects Section 6(j) of the Export Administration Act, which governs the export of goods and technology of military value to countries which have been designated by the Secretary of State as repeatedly providing support for acts of international terrorism.

First, the amendment removes the current \$1,000,000 annual threshold amount under which the Secretary of Commerce and the Secretary of State do not have to report to Congress licensed exports of goods and technology of military value to a country which the Secretary of State has determined has repeatedly provided support for acts of international terrorism. Section 509(b) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 lowered the annual threshold amount from \$7,000,000 to \$1,000,000. Where a "terrorist" country is concerned, however, there should be no threshold amount under which Congress should remain ignorant of exports of goods or technology that can aid the military or terrorist activities of such country. Removing

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the threshold amount does not prevent exports of such goods and technology; it merely requires that the exports be properly reported to Congress at least 30 days before the license for the exports is approved. The 30-day prior notice period exists under current law, but only in respect of exports which exceed the \$1,000,000 annual threshold amount.

Second, the amendment requires a validated license for all such exports of goods or technology of military value to a "terrorist" country. Under current Commerce Department regulations, a validated license is only sporadically required depending on the country and the item being exported. The amendment would incorporate into statutory law a prudent requirement for each of the countries which is on the Secretary of State's "terrorist" list. For every export of goods or technology of military value, the exporter would have to obtain an export license, meaning a "validated" license for that particular export rather than a multiple-use license for a series of exports. When dealing with a "terrorist" country, it would be foolish to permit an exporter to engage in a series of transactions without examining each export under the circumstances prevailing at the time of the export.

The amended language also stipulates that applications for any such validated license shall be generally denied by the Secretary of Commerce. Again, the presumption of denial exists in some Commerce Department regulations (especially with respect

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to Iran). It should be a statutory requirement applied to all of the Secretary of State's listed "terrorist" countries, rather than sporadically to one or two designated countries in the regulations. The presumption can be overcome as long as a 30-day prior notice is delivered to Congress. The utility of the presumption is that it discourages trade in goods or technology of military value with "terrorist" states.

Third, the new amended Section 6(j)(1) of the Export Administration Act includes in subparagraph (A) the uniform standard for determining "terrorist" countries which appears in other amendments to AECA and the Foreign Assistance Act. This adds to the current Section 6(j)(1)(A) the standard under which a government which grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism is subject to the notification requirement.

Fourth, subparagraph (B) establishes the military value standard for goods and technology under the Section 6(j)(1) notification requirement. Under current law, it has to be shown that the exports "would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism." That language is amended to read that the "exports of such goods or technology would contribute to the military potential of such country, would be destined to a military end-user or for military

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end-use in such country, or would enhance the ability of such country to support acts of international terrorism." The amended language drops the requirement that a "significant" contribution be shown. This is an entirely subjective standard open to varying interpretations. A simpler test of contribution would require that Congress be notified of essentially all exports of goods or technology of military value to "terrorist" states, rather than debate with the executive over what does or does not constitute a "significant contribution". Since such exports should be minimal in any event, this is not an onerous requirement.

A further amendment to subparagraph (B) is the inclusion of dual-use items, i.e. those exports that "would be destined to a military end-user or for military end-use in such country". This concept already appears in Commerce Department regulations, particularly with respect to Iran, and should be applied to all "terrorist" countries. The words, "including its military logistics capability", have been deleted simply because the broader wording which precedes it should stand on its own without qualification.

Fifth, current Section 6(j)(2) of the Export Administration Act, which provides for a rescission of the Secretary of State's determination under Section 6(j)(1)(A), is amended to conform with new amended Section 40(d) of AECA and the new amended Section 620A(c) of the Foreign Assistance Act of

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1961. These three rescission sections all require a 90-day prior notification to Congress of a proposed rescission and, as explained under the discussion about Section 2 above, clarify the conditions that must be met before the President may rescind the Secretary of State's determination.

SECTION 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

Section 620A of the Foreign Assistance Act of 1961, that Act's antiterrorism section, is amended to exclude AECA from the prohibition against assistance to "terrorist" countries. Amended Section 40 of AECA prohibits any provision of assistance under that Act to "terrorist" countries. Therefore, it would be redundant and inconsistent with the terms of Section 40 to retain reference to AECA in Section 620A.

Section 620A also is amended to standardize subparagraph (a)(2) with the uniform standard for determining "terrorist" countries which appears in other amendments. Thus the words "otherwise supports international terrorism" are replaced with "has repeatedly provided support for acts of international terrorism".

The new amended Section 620A(c) incorporates the standard rescission language discussed above. The new waiver language in

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amended Section 620A(d) differs from current Section 620A(b) in three major respects. First, humanitarian reasons could be used to justify military assistance or Export-Import Bank financing which could be used for military weapons purchases. Second, the 15-day prior notice requirement under current law is clarified to require prior consultation with Congress and a detailed report that includes not only the justification for the waiver, but other information such as the name of the recipient country, a description of the national security or humanitarian interests which require the waiver, the type and amount of assistance to be provided pursuant to the waiver, and the period of time during which the waiver will be effective. A final new sentence ensures that assistance provided under Section 620A's waiver authority cannot be provided if such assistance would violate the prohibitions of Section 40 of AECA. This will avoid any inconsistency between the two provisions.

SECTION 6. NOTICE TO CONGRESS OF THIRD COUNTRY TRANSFERS.

Current law generally requires that the President consent to any transfer of military weapons from a recipient country or party to a third country or party. There is no legal requirement that such consents be notified in advance to Congress. Section 6 of H.R. [] amends certain provisions of AECA and the Foreign Assistance Act of 1961 to require that Congress receive a report (referred to below as the "transfer report") at least 15 days

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before the effective date of the Presidential consent "unless the President certifies in his report that an emergency exists which requires that consent become effective immediately in the national security interests of the United States". The President must also notify Congress in writing "of any developments which alter or supplement the information provided in such report".

Items Sold Under FMS Program

The first amended provision is Section 3(a) of AECA. Under current law, Section 3(a) requires that items sold under the foreign military sales program by the United States to a recipient country cannot be transferred by that recipient country to anyone not an officer, employee or agent of that country or used for unauthorized purposes without Presidential consent. The last sentence of Section 3(a) requires the President to promptly submit a report to Congress on the "implementation" of each recipient country's agreement with the United States to adhere to this Presidential consent requirement.

The amended Section 3(a) revises the last sentence to require that before the President may consent to a third country transfer, he must file with Congress the transfer report and supplement it when necessary.

Items Exported Pursuant to a Munitions License

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Section 38 of AECA governs the issuance of export licenses for items on the U.S. Munitions List. Under Section 3(d)(3) of AECA, big ticket items (i.e., major defense equipment valued at \$14,000,000 or more or any defense article or defense service valued at \$50,000,000 or more) which have been licensed or approved under Section 38 of AECA cannot be transferred to a third country without prior Presidential consent and the submission of a report to Congress at least 30 days prior to such consent. This means that the transfer of licensed munitions items which have a value less than these amounts need not be reported to Congress.

The amended Section 38 requires that in those instances where a report is not required under Section 3(d)(3), the President nonetheless must submit to Congress the transfer report and supplement it when necessary.

Items Provided Under MAP Program

U.S. foreign military assistance (MAP) provided pursuant to Section 505 of the Foreign Assistance Act of 1961 requires that the President consent to any recipient country transferring any defense articles obtained under MAP. The amended Section 505 would require that the President submit the transfer report to Congress prior to granting his consent.

SECTION 7. DOD TRANSFERS TO OTHER AGENCIES.

Under Section 36(a) of AECA, the President is required to submit quarterly reports to Congress describing all commercial and governmental military exports. The amendment to Section 36(a) would add a new subparagraph (10) requiring a quarterly report listing all transfers of defense articles and defense services from the Department of Defense to any other Government department, agency or other entity if the value, singly or in aggregate, was \$250,000 or more during the quarter for which the report is submitted and the military items are not transferred for use disposition or use solely within the United States. This report is intended to capture inter-agency transfers which are destined for foreign recipients.

SECTION 8. NOTICE TO CONGRESS OF CERTAIN ARMS TRANSFERS.

See the discussion under Section 2 above.

SECTION 9. SPECIAL AUTHORITIES.

Section 614(c) of the Foreign Assistance Act of 1961 authorizes the President "to use amounts not to exceed \$50,000,000 of the funds made available under [the Foreign Assistance Act of 1961] pursuant to his certification that it is

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inadvisable to specify the nature of the use of such funds, which certification shall be deemed to be a sufficient voucher for such amounts." If the President uses this authority, he is obligated to "promptly and fully inform" Congress of the use of the funds.

The amendment to Section 614(c) simply clarifies that the President must fully inform Congress prior to the use of such funds.

SECTION 10. HOSTAGE ACT.

The Hostage Act of 1868 (22 U.S.C. 1732), which grants the President certain authorities to obtain the release of American citizens held hostage by foreign governments, is amended to clarify that the President's authority cannot be executed in a manner which would otherwise be prohibited by law.

100TH CONGRESS
1ST SESSION

H. R. 3651

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1987

Mr. BERMAN (for himself, Mr. FASCELL, Mr. HAMILTON, and Mr. HYDE) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Antiterrorism and Arms
5 Export Amendments Act of 1987".

6 SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUN-
7 TRIES SUPPORTING TERRORISM.

8 (a) PROHIBITION.—Section 40 of the Arms Export
9 Control Act (22 U.S.C. 2780) is amended to read as follows:

1 "SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS
2 OF INTERNATIONAL TERRORISM.

3 "(a) PROHIBITED TRANSACTIONS.—

4 "(1) UNITED STATES GOVERNMENT.—The fol-
5 lowing transactions by the United States Government
6 are prohibited with respect to any country described in
7 subsection (b):

8 "(A) Exporting or otherwise providing (by
9 sale, lease or loan, grant, or other means), direct-
10 ly or indirectly, any munitions item to such coun-
11 try under the authority of this Act, the Foreign
12 Assistance Act of 1961, or any other law. In im-
13 plementing this subparagraph, the United States
14 Government shall suspend delivery to such coun-
15 try of any such item pursuant to any such trans-
16 action which has not been completed at the time
17 the Secretary of State makes the determination
18 described in subsection (b), and shall terminate
19 any lease or loan to such country of any such
20 item which is in effect at the time the Secretary
21 of State made that determination.

22 "(B) Providing credits, guarantees, or other
23 financial assistance under the authority of this
24 Act, the Foreign Assistance Act of 1961, or any
25 other law, with respect to the acquisition of any
26 munitions item by such country. In implementing

1 this subparagraph, the United States Government
2 shall suspend expenditures pursuant to any such
3 assistance obligated before the Secretary of State
4 made the determination described in subsection
5 (b).

6 “(C) Consenting under section 3(a) of this
7 Act, under section 505(a) of the Foreign Assist-
8 ance Act of 1961, under the regulations issued to
9 carry out section 38 of this Act, or under any
10 other law, to any transfer of any munitions item
11 to such country. In implementing this subpara-
12 graph, the United States Government shall with-
13 draw any such consent which is in effect at the
14 time the Secretary of State makes the determina-
15 tion described in subsection (b).

16 “(D) Providing any license or other approval
17 under section 38 of this Act for any export or
18 other transfer (including by means of a technical
19 assistance agreement, manufacturing licensing
20 agreement, or coproduction agreement) of any
21 munitions item to such country. In implementing
22 this subparagraph, the United States Government
23 shall suspend any such license or other approval
24 which is in effect at the time the Secretary of

1 State makes the determination described in sub-
2 section (b).

3 “(E) Otherwise participating directly or indi-
4 rectly in, or take any action to facilitate, the ac-
5 quisition of any munitions item by such country.
6 This subparagraph applies with respect to activi-
7 ties of any department, agency, or other instru-
8 mentality of the Government, any officer or em-
9 ployee of the Government (including members of
10 the United States Armed Forces), and any person
11 acting at the request or on behalf of the Govern-
12 ment.

13 “(2) UNITED STATES PERSONS.—A United
14 States person may not intentionally—

15 “(A) export or otherwise provide directly or
16 indirectly (by sale, lease or loan, grant, or any
17 other means) any munitions item to any country
18 described in subsection (b) or to any person or
19 entity which that United States person has reason
20 to believe will provide such item to any such
21 country; or

22 “(B) otherwise participate directly or indi-
23 rectly in, or take any action to facilitate, the ac-
24 quisition of any munitions item by any country de-
25 scribed in subsection (b) or by any person or

1 entity which that United States person has reason
2 to believe will provide such item to any such
3 country.

4 This paragraph applies with respect to actions taken
5 by a United States person either within or outside the
6 United States.

7 “(b) COUNTRIES COVERED BY PROHIBITION.—The
8 prohibitions contained in subsection (a) apply with respect to
9 any country whose government the Secretary of State
10 determines—

11 “(1) grants sanctuary from prosecution to any in-
12 dividual or group which has committed an act of inter-
13 national terrorism; or

14 “(2) has repeatedly provided support for acts of
15 international terrorism.

16 “(c) PUBLICATION OF DETERMINATIONS.—Each de-
17 termination of the Secretary of State under subsection (b)
18 shall be published in the Federal Register.

19 “(d) RESCISSION.—A determination made by the Sec-
20 retary of State under subsection (b) may not be rescinded
21 unless the President, at least 90 days before the proposed
22 rescission would take effect, submits to the Speaker of the
23 House of Representatives and the chairman of the Committee
24 on Foreign Relations of the Senate a report justifying the
25 rescission and certifying that—

1 “(1) the government concerned has not provided
2 any support for international terrorism, including sup-
3 port or sanctuary for any major terrorist or terrorist
4 group, during the preceding 6-month period; and

5 “(2) the government concerned has provided as-
6 surances that it will not support acts of international
7 terrorism in the future.

8 “(e) WAIVER.—The President may waive the prohibi-
9 tion contained in subsection (a) with respect to a specific
10 transaction if—

11 “(1) the President determines that the transaction
12 is vital to the national security interests of the United
13 States; and

14 “(2) not less than 15 days prior to the proposed
15 transaction, the President—

16 “(A) consults with the Committee on Foreign
17 Affairs of the House of Representatives and the
18 Committee on Foreign Relations of the Senate;
19 and

20 “(B) submits to the Speaker of the House of
21 Representatives and the chairman of the Commit-
22 tee on Foreign Relations of the Senate a report
23 containing—

24 “(i) the name of any country involved in
25 the proposed transaction, the identity of any

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1 recipient of the items to be provided pursu-
2 ant to the proposed transaction, and the an-
3 ticipated use of those items;

4 "(ii) a description of the munitions items
5 involved in the proposed transaction (includ-
6 ing their market value) and the actual sale
7 price at each step in the transaction (or if the
8 items are transferred by other than sale, the
9 manner in which they will be provided);

10 "(iii) the reasons why the proposed
11 transaction is vital to the national security
12 interests of the United States and the justifi-
13 cation for such proposed transaction;

14 "(iv) the date on which the proposed
15 transaction is expected to occur; and

16 "(v) the name of every United States
17 Government department, agency, or other
18 entity involved in the proposed transaction,
19 every foreign government involved in the
20 proposed transaction, and every private party
21 with significant participation in the proposed
22 transaction.

23 To the extent possible, the information specified in subpara-
24 graph (B) of paragraph (2) shall be provided in unclassified

1 form, with any classified information provided in an adden-
2 dum to the report.

3 “(f) **EXEMPTION FOR CERTAIN REPORTED ACTIVI-**
4 **TIES.**—The prohibitions contained in subsection (a) do not
5 apply with respect to a transfer for which notification is given
6 in accordance with section 36(e) of this Act.

7 “(g) **RELATION TO OTHER LAWS.**—The provisions of
8 this section shall apply notwithstanding section 614(a) of the
9 Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)) or any
10 other provision of law.

11 “(h) **CRIMINAL PENALTY.**—Any person who willfully
12 violates this section shall be fined for each violation not more
13 than \$1,000,000, imprisoned not more than 10 years, or
14 both.

15 “(i) **CIVIL PENALTIES; ENFORCEMENT.**—In the en-
16 forcement of this section, the President is authorized to exer-
17 cise the same powers concerning violations and enforcement
18 which are conferred upon departments, agencies, and officials
19 by sections 11(c), 11(e), 11(g), and 12(a) of the Export Ad-
20 ministration Act of 1979 (subject to the same terms and con-
21 ditions as are applicable to such powers under that Act),
22 except that, notwithstanding section 11(c) of that Act, the
23 civil penalty for each violation of this section may not exceed
24 \$500,000.

25 “(j) **DEFINITIONS.**—As used in this section—

1 “(1) the term ‘munitions item’ means any item
2 which, if imported into or exported from the United
3 States, would be on the United States Munitions List;
4 and

5 “(2) the term ‘United States person’ means any
6 United States resident or national (other than an indi-
7 vidual resident outside the United States and employed
8 by other than a United States person), any domestic
9 concern (including any permanent domestic establish-
10 ment of any foreign concern) and any foreign subsidi-
11 ary or affiliate (including any permanent foreign estab-
12 lishment) of any domestic concern which is controlled
13 in fact by such domestic concern, as determined under
14 regulations of the President.”.

15 (b) CONFORMING AMENDMENT.—Section 3(f) of the
16 Arms Export Control Act (22 U.S.C. 2753(f)) is repealed.
17 SEC. 3. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LI-
18 CENSES AND IN ARMS SALES.

19 (a) EXPORT LICENSES.—Section 38(a)(2) of the Arms
20 Export Control Act (22 U.S.C. 2778) is amended by insert-
21 ing “support international terrorism,” after “arms race,”.

22 (b) ARMS SALES.—Section 36(b)(1)(D) of that Act (22
23 U.S.C. 2776(b)(1)(D)) is amended—

24 (1) by redesignating clauses (ii) through (iv) as
25 clauses (iii) through (v), respectively; and

10

1 (2) by inserting the following new clause (ii) after
2 clause (i):

3 “(ii) support international terrorism;”.

4 **SEC. 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.**

5 Section 6(j) of the Export Administration Act of 1979
6 (50 U.S.C. App 2405(j)) is amended to read as follows:

7 “(j) **COUNTRIES SUPPORTING INTERNATIONAL TER-**
8 **ROBISM.**—(1) A validated license shall be required for the
9 export of goods or technology to a country if the Secretary of
10 State has made the following determinations:

11 “(A) The government of such country grants
12 sanctuary from prosecution to any individual or group
13 which has committed an act of international terrorism,
14 or the government of such country has repeatedly pro-
15 vided support for acts of international terrorism.

16 “(B) The export of such goods or technology
17 would contribute to the military potential of such coun-
18 try, would be destined to a military end-user or for
19 military end-use in such country, or would enhance the
20 ability of such country to support acts of international
21 terrorism.

22 “(2) Applications for any validated license required
23 under paragraph (1) shall be generally denied by the
24 Secretary.

1 “(3) The Secretary and the Secretary of State shall
2 notify the Committee on Foreign Affairs of the House of
3 Representatives and the Committee on Banking, Housing,
4 and Urban Affairs and the Committee on Foreign Relations
5 of the Senate at least 30 days before issuing any validated
6 license required by paragraph (1).

7 “(4) Each determination of the Secretary of State under
8 paragraph (1)(A), including each determination in effect on
9 the date of the enactment of the Antiterrorism and Arms
10 Export Amendments Act of 1987, shall be published in the
11 Federal Register.

12 “(5) A determination made by the Secretary of State
13 under paragraph (1)(A) may not be rescinded unless the
14 President, at least 90 days before the proposed rescission
15 would take effect, submits to the Speaker of the House of
16 Representatives and the chairman of the Committee on
17 Banking, Housing, and Urban Affairs and the chairman of
18 the Committee on Foreign Relations of the Senate a report
19 justifying the rescission and certifying that—

20 “(A) the government concerned has not provided
21 any support for international terrorism, including sup-
22 port or sanctuary for any major terrorist or terrorist
23 group, during the preceding 6-month period; and

1 “(B) the government concerned has provided as-
2 surances that it will not support acts of international
3 terrorism in the future.”.

4 **SEC. 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUP-**
5 **PORTING INTERNATIONAL TERRORISM.**

6 Section 620A of the Foreign Assistance Act of 1961
7 (22 U.S.C. 2371) is amended to read as follows:

8 **“SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS**
9 **SUPPORTING INTERNATIONAL TERRORISM.**

10 “(a) **PROHIBITION.**—The United States shall not pro-
11 vide any assistance under this Act, the Agricultural Trade
12 Development and Assistance Act of 1954, the Peace Corps
13 Act, or the Export-Import Bank Act to any country whose
14 government the Secretary of State determines—

15 “(1) grants sanctuary from prosecution to any in-
16 dividual or group which has committed an act of inter-
17 national terrorism; or

18 “(2) has repeatedly provided support for acts of
19 international terrorism.

20 “(b) **PUBLICATION OF DETERMINATIONS.**—Each de-
21 termination of the Secretary of State under subsection (a),
22 including each determination in effect on the date of the en-
23 actment of the Antiterrorism and Arms Export Amendments
24 Act of 1987, shall be published in the Federal Register.

1 “(c) **RESCISSION.**—A determination made by the Secre-
2 tary of State under subsection (a) may not be rescinded
3 unless the President, at least 90 days before the proposed
4 rescission would take effect, submits to the Speaker of the
5 House of Representatives and the chairman of the Committee
6 on Foreign Relations of the Senate a report justifying the
7 rescission and certifying that—

8 “(1) the government concerned has not provided
9 any support for international terrorism, including sup-
10 port or sanctuary for any major terrorist or terrorist
11 group, during the preceding 6-month period; and

12 “(2) the government concerned has provided as-
13 surances that it will not support acts of international
14 terrorism in the future.

15 “(d) **WAIVER.**—Assistance prohibited by subsection (a)
16 may be provided to a country described in that subsection
17 if—

18 “(1) the President determines that national securi-
19 ty interests or humanitarian reasons justify a waiver of
20 subsection (a), except that humanitarian reasons may
21 not be used to justify assistance under part II of this
22 Act (including chapter 4, chapter 6, and chapter 8), or
23 the Export-Import Bank Act; and

24 “(2) at least 15 days before the waiver takes
25 effect, the President consults with the Committee on

1 Foreign Affairs of the House of Representatives and
2 the Committee on Foreign Relations of the Senate re-
3 garding the proposed waiver and submits a report to
4 the Speaker of the House of Representatives and the
5 chairman of the Committee on Foreign Relations of the
6 Senate containing—

7 “(A) the name of the recipient country;

8 “(B) a description of the national security in-
9 terests or humanitarian reasons which require the
10 waiver;

11 “(C) the type and amount of and the justifi-
12 cation for the assistance to be provided pursuant
13 to the waiver; and

14 “(D) the period of time during which such
15 waiver will be effective.

16 The waiver authority granted in this subsection may not be
17 used to provide any assistance under the Foreign Assistance
18 Act of 1961 which is also prohibited by section 40 of the
19 Arms Export Control Act.”.

20 SEC. 6. NOTICE TO CONGRESS OF THIRD COUNTRY TRANS-
21 FERS.

22 (a) ITEMS SOLD UNDER FMS PROGRAM.—The last
23 sentence of section 3(a) of the Arms Export Control Act (22
24 U.S.C. 2753(a)) is amended to read as follows: “In those
25 instances where a certification from the President is not re-

1 quired pursuant to subsection (d), the President shall, before
2 granting any consent under paragraph (2) of this subsection,
3 submit a report with respect to such consent to the Speaker
4 of the House of Representatives and to the chairman of the
5 Committee on Foreign Relations of the Senate (such report
6 to be submitted at least 15 days before the effective date of
7 the consent unless the President certifies in his report that an
8 emergency exists which requires that consent become effec-
9 tive immediately in the national security interests of the
10 United States) and shall notify the Congress in writing of any
11 developments which alter or supplement the information pro-
12 vided in such report.”.

13 (b) ITEMS EXPORTED PURSUANT TO A MUNITIONS LI-
14 CENSE.—Section 38 of that Act (22 U.S.C. 2778) is amend-
15 ed by adding at the end the following:

16 “(g) In those instances where a report from the Presi-
17 dent is not required pursuant to section 3(d)(3), the Presi-
18 dent—

19 “(1) before granting any consent to a transfer of
20 any defense article or defense service, the export of
21 which has been licensed or approved under this section,
22 shall submit a report with respect to such consent to
23 the Speaker of the House of Representatives and to
24 the chairman of the Committee on Foreign Relations of
25 the Senate (such report to be submitted at least 15

1 days before the effective date of the consent unless the
2 President certifies in his report that an emergency
3 exists which requires that consent become effective im-
4 mediately in the national security interests of the
5 United States); and

6 “(2) shall notify the Congress in writing of any
7 developments which alter or supplement the informa-
8 tion provided in such report.”.

9 (c) ITEMS PROVIDED UNDER MAP PROGRAM.—Section
10 505 of the Foreign Assistance Act of 1961 (22 U.S.C. 2314)
11 is amended by adding at the end the following:

12 “(h) The President shall, before granting any consent
13 under subsection (a)(1)(B), submit a report with respect to
14 such consent to the Speaker of the House of Representatives
15 and to the chairman of the Committee on Foreign Relations
16 of the Senate and shall notify the Congress in writing of any
17 developments which alter or supplement the information pro-
18 vided in such report. The report required by this subsection
19 shall be submitted at least 15 days before the effective date of
20 the consent unless the President certifies in his report that an
21 emergency exists which requires that consent become effec-
22 tive immediately in the national security interests of the
23 United States.”.

1 **SEC. 7. DOD TRANSFERS TO OTHER AGENCIES.**

2 (a) **QUARTERLY REPORTS.**—Section 36(a) of the Arms
3 Export Control Act (22 U.S.C. 2776(a)) is amended—

4 (1) by striking out “and” at the end of paragraph
5 (9);

6 (2) by striking out the period at the end of para-
7 graph (10) and inserting in lieu thereof “; and”; and

8 (3) by inserting after paragraph (9) the following:

9 “(10) a listing of all defense articles or defense
10 services which were sold, leased, or otherwise trans-
11 ferred by the Department of Defense to any other de-
12 partment, agency, or other entity of the United States
13 Government during the quarter for which such report
14 is submitted (including the name of the recipient Gov-
15 ernment entity and a discussion of what that entity will
16 do with those defense articles or defense services) if—

17 “(A) the value of the defense articles or de-
18 fense services was \$250,000 or more; or

19 “(B) the value of all defense articles and de-
20 fense services transferred to that Government de-
21 partment, agency, or other entity during that
22 quarter was \$250,000 or more;

23 excluding defense articles and defense services trans-
24 ferred for disposition or use solely within the United
25 States.”.

1 (b) **CLASSIFICATION OF REPORTS.**—That section is
2 amended in the parenthetical clause in the text preceding
3 paragraph (1) by inserting “, and any information provided
4 under paragraph (10) of this subsection may also be provided
5 in a classified addendum” after “(b)(1) of this section”.

6 **SEC. 8. NOTICE TO CONGRESS OF CERTAIN ARMS TRANSFERS.**

7 Section 36 of the Arms Export Control Act (22 U.S.C.
8 2776) is amended by adding at the end the following:

9 “(e) The United States Government may not, under the
10 authority of this or any other Act, transfer or assist in the
11 transfer of any munitions item (as defined in section 40(j))
12 directly or indirectly to any foreign government, any foreign
13 group or person, or any other person outside the United
14 States Government pursuant to a Presidential finding under
15 section 662 of the Foreign Assistance Act of 1961 unless the
16 President notifies the Select Committee on Intelligence of the
17 Senate and the Permanent Select Committee on Intelligence
18 of the House of Representatives of such transfer in accord-
19 ance with the procedures set forth in section 501 of the Na-
20 tional Security Act of 1947 (50 U.S.C. 413) for the reporting
21 of any intelligence activities.”.

22 **SEC. 9. SPECIAL AUTHORITIES.**

23 The second sentence of section 614(c) of the Foreign
24 Assistance Act of 1961 (22 U.S.C. 2364(c)) is amended to
25 read as follows: “The President shall fully inform the chair-

1 man and ranking minority member of the Committee on For-
2 eign Affairs of the House of Representatives and the chair-
3 man and ranking minority member of the Committee on For-
4 eign Relations of the Senate of each use of funds under this
5 subsection prior to the use of such funds.”.

6 SEC. 10. HOSTAGE ACT.

7 Section 2001 of the Revised Statutes of the United
8 States (22 U.S.C. 1732) is amended by inserting “and not
9 otherwise prohibited by law” after “acts of war”.

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